

## 1.19. Basic Crime Elements Definition

In this case, the State of Indiana has charged the Defendant with [INSERT CRIME HERE]. The charge(s) read(s) as follows: [INSERT THE CHARGE WITH OATH OR AFFIRMATION LANGUAGE REDACTED].

The charge which has been filed is the formal method of bringing the Defendant to trial. The filing of a charge or the Defendant's arrest is not to be considered by you as any evidence of guilt.

A plea of not guilty has been entered on behalf of the Defendant.

The crime of [INSERT CRIME HERE] as charged in Count [SPECIFY COUNT] is defined by law as follows:

A person who [QUOTE THE STATUTE] commits [THE OFFENSE CHARGED]. Before you may convict the accused, the State must have proven each of the following beyond a reasonable doubt:

1. The Accused;
2. [SET FORTH EACH ELEMENT OF THE OFFENSE ON A SEPARATE LINE]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of [INSERT OFFENSE CHARGED], a [felony] [a misdemeanor], charged in Count [SPECIFY COUNT].

**Authority:** 1.0700 [The Charge]; 1.1100 [Charge not Evidence and Plea]; 1.0900 [The Crime Definition]; 13.3900 [Charged offense—elements], amended with accused vs. defendant, and modified to include requirement of proof beyond a reasonable doubt when setting forth elements.

This instruction would need to be given for each offense charged.

The revision committee made the following comment to this instruction:

If an instruction on a defense is required, add it as an element the State must disprove, as shown in the format on the following page [defendant has been changed in this manual to accused].

### Comments

The charging information need not be sworn or affirmed by the prosecuting attorney (or deputy prosecuting attorney). Ind. Code § 35-34-1-2 (2018).

If oath or affirmation language appears on the charging information, it should be redacted before including it in jury instructions. "Inclusion of affirmation language of this type raises several potential problems, including that it gives the semblance of attribution to the trial court or to an unknown affiant, who may or may not be available for cross-examination, as to the veracity of the factual basis for the charges. This is undesirable and completely avoidable. Thus, while the pattern jury instructions do not clearly require redaction, we strongly advise it." Lynn v. State, 60 N.E.3d 1135, 1139 (Ind. Ct. App. 2016), *trans denied*.

Some editing is necessary in almost every case to exclude statutory provisions that have no application to the facts charged. Be sure to include elements of criminal intent, e.g., "know," which are required by case law and are omitted in the statute.

Particular attention should be paid to those statutes with sentence enhancement built in because of prior convictions. The enhancement portion *must* be bifurcated and not referred to in any way in Phase I of the trial. Refer to Chapter 15 for appropriate language in Phase II of bifurcated trials.